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August 9, 2022

Daniel Sheppard
Senior Commission Counsel
Public Order Emergency Commission
121 King Street East, 25th Floor
Toronto, ON M5H 3X7

Re: *Public Order Emergency Commission*

Dear Mr. Sheppard:

On behalf of our client GoFundMe, Inc. (“GoFundMe”), I write in response to your July 15, 2022 Letter pertaining to GoFundMe’s removal of the Freedom Convoy fundraiser from its platform due to its violation of GoFundMe’s Terms of Service and GoFundMe’s subsequent initiation of full refunds, including any tips and transaction fees, for all donations made by all donors. We believe that the following summary of the Freedom Convoy fundraiser and GoFundMe’s actions with regard to it, along with the key documents accompanying this letter, will fulfill the needs of your investigation as it pertains to GoFundMe. If you have any additional questions after you have had the chance to review this information, please do not hesitate to contact me.

GoFundMe provides this response voluntarily, while preserving all rights and objections. This response is based on GoFundMe’s understanding of the information reasonably available to it as of the date of this letter. This response and the accompanying documents contain confidential business information and are being provided for the sole purpose of resolving questions raised by Public Order Emergency Commission about the Freedom Convoy fundraiser and GoFundMe’s decision to remove it from its platform. GoFundMe requests that the information herein be used only for this purpose and not be shared with or disclosed to any other party. GoFundMe reserves the right to supplement or amend this response should further investigation of this matter so require.

I. GoFundMe’s decision to remove the Freedom Convoy fundraiser from its platform

- a. **GoFundMe coordinated with the Freedom Convoy fundraiser organizer to ensure contributions would be used to carry out the stated purpose set forth in the fundraiser and comply with GoFundMe's Terms of Service.**

The Freedom Convoy fundraiser was created on the GoFundMe platform on January 14, 2022. The fundraiser organizer, like all GoFundMe fundraiser organizers, agreed to abide by GoFundMe's Terms of Service as a condition of posting the fundraiser to the platform.¹ Based on the original fundraiser description, GoFundMe understood that the organizer's goal was to support a peaceful demonstration in Ottawa protesting certain rules and mandates issued by the Canadian government.² On January 22, 2022, the organizer edited the fundraiser to include the following language: "Any left over donations will be donated to a credible Veterans organization which will be chosen by the donors."³

On January 27, 2022, the organizer agreed to and signed the GoFundMe Letter of Attestation.⁴ Per the terms of the Letter of Attestation, the organizer agreed that any distributed funds would be "held by [the fundraiser organizer] as a fiduciary for the ultimate benefit of the Convoy Participants and any charitable organizations chosen to receive any remaining funds."⁵ The organizer also agreed that she would be responsible for delivering the funds in a manner consistent with the plan laid out in the Letter of Attestation and the purpose of the fundraiser.⁶ The organizer likewise confirmed that both the use of funds and her use of the GoFundMe platform were subject to the Terms of Service.⁷ Finally, the Letter of Attestation specified that "[a]ll funds not distributed to Convoy Participants will be delivered to yet-to-be-determined registered charitable organizations in good standing."⁸

¹ GoFundMe's Terms of Service are attached hereto as **Exhibit A**. The Terms of Service are also available publicly at <https://www.gofundme.com/c/terms>.

² A document capturing the original fundraiser description and all fundraiser edits and updates is attached hereto as **Exhibit B**.

³ See Ex. B (edit made on 01/22/22 11:11 AM).

⁴ The Letter of Attestation is attached hereto as **Exhibit C**.

⁵ Ex. C at 1.

⁶ *Id.*

⁷ *Id.* at 1-2.

⁸ *Id.* at 2.

Upon receiving the executed Letter of Attestation from the organizer, on January 27, 2022, GoFundMe initiated through Stripe (the third-party payment processor) a single distribution of \$1M CAD comprised of Freedom Convoy fundraiser donations, which was deposited to the bank account designated by the organizer. This was the only distribution made from the fundraiser.

b. GoFundMe monitored and ultimately removed the Freedom Convoy fundraiser from its platform in accordance with the Terms of Service.

On February 2, 2022, after several days of reviewing publicly available reports by local authorities, including a statement issued by the Ottawa Police describing the Freedom Convoy demonstration as “unique in nature, massive in scale, polarizing in context and dangerous in literally every other aspect of the event itself,”⁹ GoFundMe suspended the fundraiser for review. While suspended for review, donations and withdrawals were both paused.

From February 2, 2022, to February 4, 2022, GoFundMe continued to monitor the demonstration. On February 2, 2022, during a press conference held by the Ottawa Police, Deputy Chief Steve Bell called the demonstration something “between a demonstration and a long-term plan to occupy [Ottawa] streets” and described the demonstrators remaining in Ottawa as “a highly-determined and highly-dedicated group of unlawful individuals.”¹⁰

GoFundMe then spoke directly with Deputy Chief Bell shortly after his remarks to the press. Deputy Chief Bell reiterated his description of the demonstration as an “occupation” and confirmed that there were several active investigations into acts of violence or hate perpetrated by demonstrators. Deputy Chief Bell also noted that Freedom Convoy protestors were discussing how the funds raised by the GoFundMe Freedom Convoy fundraiser would allow them to extend their presence in Ottawa.

On February 3, 2022, GoFundMe spoke with Ottawa Mayor Watson, who stressed growing concerns over the protestors’ occupation of the city, and in particular, described several incidents of protestors engaging in harassment of Ottawa residents, property damage, violence, and other unlawful conduct.

On February 3, 2022, the fundraiser organizer and her team held a press conference to

⁹ See Chief Peter Sloly remarks during Media availability (January 31, 2022) (available at <https://www.ottawapolice.ca/Modules/News/index.aspx?lang=en&newsId=4e505c6b-0e2e-4a69-a9f0-cfcdcb3e542>). In that same statement, the Ottawa Police also announced that in connection with the demonstration, it had “several active criminal investigations undergoing from bribery to threats to assault to the dangerous operation of vehicles” and that “1000 potential flashpoints could have resulted in rioting, injury, or death.” *Id.*

¹⁰ See Ted Raymond and Michael Woods, “Ottawa police expect ‘Freedom Convoy’ protest to grow this weekend.” (February 2, 2022) (available at <https://ottawa.ctvnews.ca/ottawa-police-expect-freedom-convoy-protest-to-growthis-weekend-1.5764002>).

communicate that the team had been working closely with Ottawa Police and that fundraiser donations would not be given to those violating the law. After the press conference, GoFundMe spoke directly with the organizer and her team. When GoFundMe asked who the team had been coordinating with from the Ottawa Police, the team could not name an individual. GoFundMe also asked how the team was working to ensure that fundraiser donations would not be provided to individuals who were in violation of the law. The organizer's team could not articulate a clear answer and instead responded that it was doing what it could. The team also denied that protestors were engaged in any illegal activities.

On February 4, 2022, GoFundMe again spoke with Deputy Chief Bell, who stated that the situation was escalating, Ottawa residents were legitimately scared, and his department had opened numerous investigations for various acts of unlawful conduct, including harassment, assault, and violence, in connection with the demonstration.

After taking all facts into account, on February 4, 2022, GoFundMe determined that the Freedom Convoy fundraiser no longer complied with its Terms of Service and decided to remove the fundraiser.¹¹

c. GoFundMe has refunded all Freedom Convoy fundraiser donations, including any tip and transaction fee.

On the afternoon of February 4, 2022, GoFundMe removed the fundraiser and provided donors with two options: (1) request a refund based on instructions and an online form provided by GoFundMe, or (2) opt for their donations to go to independent charities "chosen by the Freedom Convoy 2022 organizers and verified by GoFundMe."¹²

GoFundMe initially included the second option for donors because the Freedom Convoy fundraiser organizer had stated on the fundraising page that "[a]ny left over donations will be donated to a credible Veterans organization which will be chosen by the donors,"¹³ and because the Letter of Attestation agreed to by the organizer stated that the organizer would serve "as a fiduciary for the ultimate benefit of the Convoy Participants and any charitable organizations

¹¹ GoFundMe has provided this explanation to the Freedom Convoy donors and to the public in a series of blog posts on February 2, 2022, February 4, 2022, and February 5, 2022. *See* GoFundMe Statement on the Freedom Convoy 2022 Fundraiser (2/2/2022 and 2/4/2022) and UPDATE: GoFundMe to refund all Freedom Convoy 2022 donations (2/5/2022), <https://medium.com/gofundme-stories/update-gofundme-statement-on-the-freedom-convoy-2022-fundraiser-4ca7e9714e82>.

¹² GoFundMe Statement on the Freedom Convoy 2022 Fundraiser (2/2/2022 and 2/4/2022), <https://medium.com/gofundme-stories/update-gofundme-statement-on-the-freedom-convoy-2022-fundraiser-4ca7e9714e82>.

¹³ Ex. B (edit made on 01/22/22 11:11 AM).

chosen to receive any remaining funds,” and that “[a]ll funds not distributed to Convoy Participants will be delivered to yet-to-be-determined registered charitable organizations in good standing.”¹⁴

After publicly communicating its decision to remove the fundraiser and the two choices for donors with respect to their donations, GoFundMe learned that its announcement was being misconstrued and misunderstood. GoFundMe discovered on several online and social media platforms multiple false assertions accusing GoFundMe of fraud and misappropriating donor funds.¹⁵

Shortly after making its announcement, GoFundMe employees experienced a flood of violent and threatening messages, including death threats.¹⁶ GoFundMe became concerned for the safety of its staff.

Furthermore, while GoFundMe and the fundraiser organizer kept an open line of communication up to the point that GoFundMe removed the fundraiser, once GoFundMe alerted the organizer that the fundraiser would be taken down, communications from the organizer ceased. As a result, GoFundMe no longer believed that it would be possible for the organizer and the company to work together in the process necessary for the organizer to choose other charitable organizations as the new beneficiaries of any funds remaining after GoFundMe first returned the donations to those donors requesting refunds.

For the reasons described above, on the evening of February 4, 2022, GoFundMe decided to automatically refund *all* contributions from fundraiser donors. This decision was made in accordance with the Terms of Service, which provide that “GoFundMe may, at any time, for any reason, without notice, and in its sole discretion, offer or issue a refund of [d]onation(s) with or without consulting with [the fundraiser organizer and/or beneficiary], which may comprise the entire amount donated to [the] [f]undraiser.”¹⁷

¹⁴ Ex. C at 1-2.

¹⁵ For example, journalist Tim Pool posted to his one million Twitter followers that “GoFundMe just stole the FreedomConvoy’s money.” See @Legalcast, Twitter (Feb. 4, 2022, 3:50 PM), <https://twitter.com/Timcast/status/1489748249246318592>.

¹⁶ Prior to February 4, GoFundMe had received threatening messages in relation to the Freedom Convoy protest, but the volume increased, and the violent nature of the messages worsened after GoFundMe removed the fundraiser and announced that donations could either be refunded or directed to other charities chosen by the fundraiser organizer.

¹⁷ Ex. A, section re “Organizers, Beneficiaries or Charities.”

As explained in GoFundMe's Terms of Service,¹⁸ GoFundMe is not a payment processor and does not hold any funds, nor could GoFundMe redirect funds to itself. Rather, GoFundMe uses third-party payment processing partners to process, hold, and pay out all fundraiser donations. As such, to refund the Freedom Convoy fundraiser donations, GoFundMe worked with its third-party payment processor, Stripe.

On Saturday, February 5, 2022, GoFundMe initiated the automatic refund process through Stripe. The refunds include all donations made from all donors to the Freedom Convoy fundraiser. The refunds include all tips and transaction fees. And the refunds also include all those donations which were already part of the January 27 \$1M CAD distribution (as GoFundMe had not recollected those funds from the organizer), resulting in a significant out-of-pocket loss for GoFundMe of those funds.

No funds donated to the Freedom Convoy fundraiser were distributed to charities.

The Freedom Convoy fundraiser received a total of approximately \$10,000,000 CAD from 133,836 donations. All donors are expected to see a full refund, including any tip and transaction fee, returned to their original payment method. The amount of time it takes for a donor to see the funds returned to their original payment method depends on third-party payment processor and issuing bank times as well as on whether the donor filed a transaction dispute with their credit card issuer. GoFundMe understands that nearly all donors should have seen the funds returned to their original payment method as of the date of this letter. To the extent that this does not resolve the Commission's request, GoFundMe would be happy to provide additional information.

II. Ottawa local authorities' statements and testimony about the Freedom Convoy.

As noted, from February 2, 2022, to February 4, 2022, GoFundMe initiated conversations with Ottawa law enforcement leaders and the Ottawa Mayor's office multiple times to get firsthand reporting on the protest. In each conversation, the Ottawa authorities gave a clear and consistent message: (1) the protest was dangerous, (2) protestors were acting violently and unlawfully, and (3) Ottawa residents were facing harassment and assault.

In addition to GoFundMe's communications with the local Ottawa authorities, GoFundMe reviewed public statements about the Convoy protest made by Ottawa law enforcement. These statements included information about Ottawa law enforcement's concern regarding unlawful activities connected with the Freedom Convoy protests, which GoFundMe was informed culminated in more than 200 arrests and criminal charges leveled against more than 100 participating individuals. These public statements include:

¹⁸ See *id.*, section re "Access and Use of the Services."

1. On January 30, 2022, Ottawa police reported that they saw “multiple cases of disruptive, inappropriate and threatening behaviour from demonstrators.”¹⁹
2. On January 31, 2022, Chief Peter Sloly remarked that, “[w]e have active criminal investigations undergoing from bribery to threats to assault to the dangerous operation of vehicles.”²⁰
3. On January 31, 2022, Ottawa Mayor Watson remarked that protestors were “harassing,” “threatening,” and “intimidating,” Ottawa residents, and in particular, retail workers.²¹ Mayor Watson also provided several examples of the protestors’ “disgraceful” behavior, including “stealing from a soup kitchen,” and “carrying swastika signs.”²²
4. On February 1, 2022, the Ottawa police reported that it had charged two protestors with criminal offenses (one protestor was charged with the criminal offense of Carry a Weapon to a Public Meeting) and was investigating the desecration of a war monument.²³
5. On February 2, 2022, Chief Peter Sloly addressed Ottawa residents and described the protest as illegal, specifically with respect to protestors’ threatening behavior.²⁴ That same day the Ottawa police charged a protestor with making threats.²⁵

¹⁹ Ottawa Police Service Press Release (Jan. 30, 2022, 7:28 PM), available at <https://www.ottawapolice.ca/Modules/News/index.aspx?keyword=&date=01/01/2022&newsId=9bbfb519-7695-4d88-80be-942baa12c223>.

²⁰ Chief Peter Sloly remarks during Media availability (Jan. 31, 2022), available at <https://www.ottawapolice.ca/Modules/News/index.aspx?lang=en&newsId=4e505c6b-0e2e-4a69-a9f0-cfcddeb3e542>; see also Dowd Bennett Letter, *supra* note 1, at 3 (providing the same quote).

²¹ “Ottawa mayor has message for freedom convoy protestors: ‘It’s time to move on’” (Jan. 31, 2022), available at <https://www.youtube.com/watch?v=9FLdHh92PIA>.

²² *Id.*

²³ Ottawa Police Service Press Release (Feb. 1, 2022, 8:45 PM), available at <https://www.ottawapolice.ca/Modules/News/index.aspx?keyword=&date=02/01/2022&page=8&newsId=bbbbbb85e-4056-4321-954c-5cf034dc3f07>.

²⁴ Chief Peter Sloly remarks during Media availability (Feb. 2, 2022), available at <https://twitter.com/OttawaPolice/status/1488964871425306628>.

²⁵ Ottawa Police Service Press Release (Feb. 2, 2022, 11:05 AM), available at <https://www.ottawapolice.ca/Modules/News/index.aspx?keyword=&date=02/01/2022&page=8&newsId=f915d2c2-0ca0-4258-b821-837fb901be04>.

6. On February 3, 2022, the Ottawa police reported that it laid multiple charges, among them transportation of dangerous goods and for driving while criminally prohibited.²⁶
7. On February 4, 2022, the Ottawa police announced additional measures it was taking to protect Ottawa neighborhoods. In doing so, the police noted that its actions were aimed at addressing protestors' "unlawful and threatening; conduct" and the "violence[] and illegal acts" endured by Ottawa residents.²⁷

Since the protest, Ottawa Interim Police Chief Bell testified on March 24, 2022, before the Canadian Parliament.²⁸ In his testimony, Interim Police Chief Bell made the following statements:

8. "This unlawful protest was unprecedented. The protestors brought thousands of vehicles to our city with the full intention of disrupting our capital. After they arrived, many chose to stay and were clear in their words and actions that they meant to do damage to our community."
9. "Our police service received regular reports of intimidating and threatening behaviour towards residents on a daily basis. We had reports of hate crimes being committed and of willful disregard of police and court orders. The protestors used their vehicles as tools to back up their behaviour, honking their horns and racing dangerously around streets in the downtown core."
10. "Despite our attempts to negotiate or threats of investigation and enforcement, the illegal and disruptive behaviors continued throughout the protest and became elevated on weekends when more protestors arrived."
11. "During the protest, we saw clear signs of hate, such as swastikas, anti-government sentiment, leaders posting threatening language on social media and other various forms of social disorder."
12. "In total, there were 230 arrests, and 118 people were criminally charged with more than 400 criminal counts. Hundreds of provincial offence notices were issued. There are cases that are still moving through the courts, and multiple investigations are ongoing."

²⁶ Ottawa Police Service Press Release (Feb. 3, 2022, 9:07 AM), available at <https://www.ottawapolice.ca/Modules/News/index.aspx?keyword=&date=02/01/2022&page=7&newsId=3eae7a92-fdab-4477-9625-e40cf0823823eba>.

²⁷ Ottawa Police Twitter, (Feb. 4, 2022, 6:09 AM), <https://twitter.com/OttawaPolice/status/1489602087226949635>.

²⁸ See Standing Committee on Public Safety and National Security, House of Commons of Canada, Hearing Transcription (March 24, 2022), attached hereto as **Exhibit D**.

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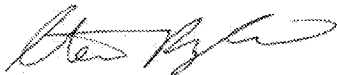
13. "As the protest/demonstration unfolded, we quickly identified it as an illegal occupation of our streets."

* * *

Thank you for your attention to this matter. If you or your colleagues have any questions or need any clarification regarding this matter, or if there is further information that you believe would be necessary to address your concerns, please feel free to contact me directly to discuss. I can be reached by email at sragland@keker.com or by telephone at (415) 773-6604.

Very truly yours,

KEKER, VAN NEST & PETERS LLP



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